

MAY 16 1975 4 10 PM

INTERSTATE COMMERCE COMMISSION

SECOND MORTGAGE OF RAILROAD CARS

This Mortgage, made this 8th day of May, 1975, by Tomco Railway Company, Inc., a Minnesota corporation of Duluth, Minnesota Mortgagor, to Northwestern Bank of commerce of Duluth, Minnesota, Mortgagee, a Minnesota Bank Corporation, WITNESSETH:

1. That said Mortgagor does hereby mortgage to said Mortgagee Three Hundred Nineteen railway freight cars, A.A.R. mechanical designation FMS as set forth in the attached schedule labeled Exhibit "A" and incorporated herein by reference. Said railroad freight cars more particularly described and as registered in The Official Railway Equipment Register, "Private Car Owners", to Tomco Railway Car Company, Inc., reporting marks "KDTX", and further described in Agent Hinsch's Mileage Tariff 7-R as

"flat cars equipped with bulkheaded ends, a steel "A" frame down the center and chains, cables, and clamps providing adjustable tie-downs, for handling packaged units of lumber and building products,"

together with all replacements and substitutions therefor, improvements thereof, and all repairs and additions thereto, and any and all mileage revenue accruing therefrom.

2. This mortgage is intended to secure and does hereby secure the payments to said Mortgagee, at its banking house in Duluth, Minnesota, of the Following:

- (a) One note for \$425,000.00 of even date herewith, with interest therein specified, and payable as hereinafter provided; and
- (b) All sums or amounts that are necessarily advanced or expended or advanced by the Mortgagee, its successors or assigns, for the maintenance or preservation of the property or any part thereof described in this mortgage.

3. That this is a Second Mortgage and the Mortgagor hereby

declares and warrants to Mortgagee that, subject to prior mortgages hereinafter described, it is and will continue to be the absolute owner and in control of all said mortgaged property hereinabove described and that said mortgaged property is and will remain free and clear of all liens, encumbrances and adverse claims, except first mortgages of said cars to Northwestern Bank of Commerce of Duluth, Minnesota as follows:

- (a) one, dated July 26, 1971, filed and recorded July 28, 1971 at 10:05 A.M. with the Interstate Commerce Commission, recordation number 6254, and
- (b) another, dated July 26, 1971, filed and recorded July 28, 1971 at 10:05 A.M. with the Interstate Commerce Commission, recordation number 6254-A.

4. That the said Mortgagor promises and agrees:

- (a) To pay interest on said note for \$425,000.00 in monthly installments on the first day of each month after said note is dated and first amount advanced, up to and including the first day of September, 1975. Principal and interest payments are to commence on the first day of October, 1975 and shall be in the amount of \$10,000.00 each, which shall include interest at a rate hereafter specified, and a similar payment of \$10,000.00 shall be made on the first day of each and every month thereafter up to and including the first day of September, 1976, and the entire unpaid principal balance and accrued interest shall be due and payable on the first day of October, 1976.
- (b) To properly care for and keep said mortgaged property herein described in first class condition, order and repair, reasonable wear and tear excepted.
- (c) To pay all taxes, mileage and otherwise, liens, or assessments of whatsoever kind or description that may be levied against said mortgaged property, or any part thereof, when the same shall become due and prior to the time when the same, if unpaid, might become a lien or charge against any such property, provided, however, Mortgagor shall not be required to pay any such tax, lien or assessment so long as the validity thereof shall be actively contested in good faith by proper proceedings, but provided further that any such tax, lien or assessment shall be paid forthwith upon the commencement of proceedings to foreclose

any lien securing the same or prevent railway use of said cars.

- (d) To comply, and use said mortgaged property and each and every part thereof, in strict conformity with all laws and regulations with reference to the use, operation and restriction thereof; not to permit the use or control of said cars without payment of applicable mileage allowances, or to sell or to attempt to sell or further mortgage the said property without the written consent of Mortgagee.
- (e) To immediately notify the Mortgagee in the event of the destruction or substantial damage to any car from any cause whatsoever; and
- (f) To permit Mortgagee or any of its authorized agents to enter upon any premises upon which said mortgaged property or facilities for repair thereof are situated and examine said property or facilities and, upon demand of Mortgagee, to make a written report to said Mortgagee concerning the condition, use and control thereof.

5. Security:

- (a) A Security Agreement covering a second lien on all cars will be filed with the ICC and Secretary of State. Each of the cars representing Northwestern Bank of Commerce first position will have a plate of notification affixed thereon.
- (b) Leases: Assignment of leases covering any and all said cars not presently assigned under the above mentioned first mortgage agreements.

The original copy of the above leases, and any subsequent leases completed with all signatures affixed, will be retained in the bank's records. It being the intent of this provision to insure all leases on said rail cars be assignable and be assigned to the bank.

- 6. (a) The invalidity or unenforceability of any provision or provisions of this mortgage shall not render any other provision or provisions invalid or unenforceable.
- (b) The failure of Mortgagee, upon knowledge of any default or violation hereof by Mortgagor, to enforce its rights or remedies shall not be construed as a waiver of any provisions hereof, or of any right or remedy of Mortgagor. Waiver of any breach or default shall not

constitute a waiver of any subsequent breach or fault.

Dated this 8th day of May, 1975, and duly executed in original and three counterparts.

TOMCO RAILWAY CAR COMPANY, INC.

BY

Kenneth D. Tomlinson
Kenneth D. Tomlinson

Iva L. Tomlinson
Iva L. Tomlinson

ATTEST:

Iva L. Tomlinson
Sec.

STATE OF MINNESOTA)

) SS

XOUNTY OF ST. LOUIS)

On this 8th day of May, 1975, before me appeared

Kenneth D. Tomlinson, to me personally known who, by me duly sworn,

did say that he is the President of Tomco Railway Car Company, Inc.,

and Iva L. Tomlinson, Secretary of Tomco Railway Car Company, Inc.,

that the seal affixed to the foregoing instrument is the corporate

seal of the corporation, and that the instrument was executed in be-

half of said corporation by authority of its Board of Directors; and

said Kenneth D. Tomlinson and Iva L. Tomlinson acknowledge the

instrument to be the free act and deed of the corporation.

John W. W.

RONALD W. WALLS

EXHIBIT "A"

KDTX 101	KDTX 166	KDTX 237	KDTX 304	KDTX 380
KDTX 102	KDTX 167	KDTX 238	KDTX 306	KDTX 381
KDTX 103	KDTX 168	KDTX 239	KDTX 308	KDTX 382
KDTX 104	KDTX 170	KDTX 240	KDTX 309	KDTX 383
KDTX 105	KDTX 171	KDTX 241	KDTX 310	KDTX 384
KDTX 106	KDTX 173	KDTX 242	KDTX 311	KDTX 385
KDTX 107	KDTX 174	KDTX 243	KDTX 312	KDTX 386
KDTX 108	KDTX 175	KDTX 244	KDTX 313	KDTX 387
KDTX 109	KDTX 178	KDTX 246	KDTX 314	KDTX 388
KDTX 110	KDTX 179	KDTX 247	KDTX 315	KDTX 389
KDTX 111	KDTX 180	KDTX 248	KDTX 316	KDTX 390
KDTX 112	KDTX 181	KDTX 249	KDTX 317	KDTX 391
KDTX 113	KDTX 182	KDTX 250	KDTX 319	KDTX 392
KDTX 114	KDTX 183	KDTX 251	KDTX 321	KDTX 393
KDTX 115	KDTX 184	KDTX 252	KDTX 322	KDTX 394
KDTX 116	KDTX 185	KDTX 253	KDTX 323	KDTX 395
KDTX 117	KDTX 187	KDTX 254	KDTX 324	KDTX 397
KDTX 118	KDTX 188	KDTX 255	KDTX 325	KDTX 399
KDTX 119	KDTX 189	KDTX 256	KDTX 326	KDTX 401
KDTX 120	KDTX 190	KDTX 257	KDTX 327	KDTX 402
KDTX 121	KDTX 191	KDTX 258	KDTX 328	KDTX 403
KDTX 123	KDTX 192	KDTX 259	KDTX 329	KDTX 404
KDTX 124	KDTX 193	KDTX 260	KDTX 330	KDTX 405
KDTX 125	KDTX 194	KDTX 261	KDTX 333	KDTX 406
KDTX 126	KDTX 195	KDTX 262	KDTX 334	KDTX 407
KDTX 127	KDTX 196	KDTX 263	KDTX 335	KDTX 408
KDTX 129	KDTX 197	KDTX 264	KDTX 337	KDTX 409
KDTX 130	KDTX 198	KDTX 265	KDTX 338	KDTX 410
KDTX 131	KDTX 199	KDTX 266	KDTX 339	KDTX 411
KDTX 132	KDTX 200	KDTX 267	KDTX 340	KDTX 412
KDTX 133	KDTX 201	KDTX 268	KDTX 343	KDTX 413
KDTX 134	KDTX 202	KDTX 269	KDTX 344	KDTX 415
KDTX 135	KDTX 204	KDTX 271	KDTX 345	KDTX 416
KDTX 136	KDTX 206	KDTX 272	KDTX 346	KDTX 417
KDTX 137	KDTX 207	KDTX 273	KDTX 349	KDTX 418
KDTX 138	KDTX 208	KDTX 274	KDTX 350	KDTX 419
KDTX 139	KDTX 209	KDTX 275	KDTX 351	KDTX 420
KDTX 140	KDTX 210	KDTX 276	KDTX 352	KDTX 421
KDTX 141	KDTX 211	KDTX 277	KDTX 353	KDTX 422
KDTX 142	KDTX 212	KDTX 278	KDTX 354	KDTX 423
KDTX 143	KDTX 213	KDTX 279	KDTX 355	KDTX 424
KDTX 144	KDTX 214	KDTX 280	KDTX 356	KDTX 425
KDTX 145	KDTX 215	KDTX 281	KDTX 357	KDTX 426
KDTX 146	KDTX 216	KDTX 282	KDTX 358	KDTX 427
KDTX 147	KDTX 217	KDTX 283	KDTX 359	KDTX 428
KDTX 148	KDTX 218	KDTX 284	KDTX 360	KDTX 429
KDTX 149	KDTX 219	KDTX 285	KDTX 361	KDTX 430
KDTX 150	KDTX 220	KDTX 286	KDTX 362	KDTX 431
KDTX 151	KDTX 221	KDTX 287	KDTX 363	KDTX 432
KDTX 152	KDTX 222	KDTX 288	KDTX 364	KDTX 433
KDTX 153	KDTX 224	KDTX 289	KDTX 365	KDTX 434
KDTX 154	KDTX 225	KDTX 290	KDTX 366	KDTX 435
KDTX 155	KDTX 226	KDTX 291	KDTX 367	KDTX 436
KDTX 156	KDTX 227	KDTX 292	KDTX 368	KDTX 437
KDTX 157	KDTX 228	KDTX 293	KDTX 369	KDTX 438
KDTX 158	KDTX 229	KDTX 294	KDTX 370	KDTX 439
KDTX 159	KDTX 230	KDTX 295	KDTX 371	KDTX 440
KDTX 160	KDTX 231	KDTX 296	KDTX 373	KDTX 441
KDTX 161	KDTX 232	KDTX 297	KDTX 374	KDTX 442
KDTX 162	KDTX 233	KDTX 298	KDTX 375	KDTX 443
KDTX 163	KDTX 234	KDTX 299	KDTX 376	KDTX 444
KDTX 164	KDTX 235	KDTX 300	KDTX 377	KDTX 445
KDTX 165	KDTX 236	KDTX 303	KDTX 379	KDTX 446
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